

## **EXHIBIT D**

## COPY OF TRANSCRIPT

### IN THE UNITED STATES BANKRUPTCY COURT FOR DISTRICT OF DELAWARE

IN RE:

W.R. Grace & Co., et al.

Bankruptcy No. 01-1139

Debtor.

Chapter 11

Related to Dkt. #2193, 2375

Related to July 22, 2002,

Agenda No. 13

DEPOSITION OF JOHN A. KILPATRICK  
Taken on behalf of the Debtor  
May 6, 2003

- - -

BE IT REMEMBERED THAT, pursuant to the Washington Rules of Civil Procedure, the deposition of John A. Kilpatrick was taken before Judith Cederblom, a Certified Court Reporter and a Notary Public for the State of Washington, on May 6, 2003, commencing at the hour of 9:05 a.m., the proceedings being reported at 1601 Fifth Avenue, Suite 2100, Seattle, Washington.

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1 If they mentioned attic insulations,  
2 wouldn't you have indicated that in your report, Exhibit 1?

3 A. I may or may not have specifically brought that  
4 in.

5 Q. Are you aware of any studies concerning the effect  
6 that attic insulation may have on residential properties?

7 A. In general, attic insulation, or specific to  
8 zonolite?

9 Q. In general. Let's start generally, and then we'll  
10 work specifically.

11 A. Certainly there are -- there have been a number  
12 of studies done about attic insulation in general over the  
13 years. Often these have been done by the Home Builders  
14 Institute or the Home Builders Association or groups like  
15 Marshall & Swift or Dodge, F.W. Dodge.

16 I mean, all of these groups opine with  
17 respect to the impact of attic insulation in general on  
18 residential values. I've not brought any of those in  
19 because they tend to be broad background documents and not  
20 specific to the case at hand.

21 Q. And then, more specifically then, you're not aware  
22 of any studies specifically concerning Zonolite Attic  
23 Insulation and its effect on the value of residential  
24 properties?

25 A. Off the top of my head, no.

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1 Q. Because you would have included it in your  
2 reference material?

3 A. That's right.

4 Q. And again if we could turn to the second page of  
5 Exhibit 1, the quote -- the first quoted paragraph which  
6 says: "The scope of discovery will be limited to what  
7 science demonstrates with regard to whether ZAI creates an  
8 unreasonable risk of harm."

9 Do you see where I read that?

10 A. That's correct.

11 Q. Once again, the scope of your testimony isn't how  
12 any of that relates to harm to the occupants; right?

13 A. No. Strictly harm to value.

14 Q. Strictly harm to value. Again on Page 2 of  
15 Exhibit 1, you reference that you've relied on other experts  
16 whom you have deemed reliable?

17 A. Yes.

18 Q. Which experts have you relied on?

19 A. Oh, I've got a listing of them back in the  
20 office. And I have gone through their documents and their  
21 CVs to see what they have had to say with respect to  
22 zonolite.

23 I don't have a mental listing of them  
24 right now. They are, I think known to both sides in this  
25 case.

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1 impacts. Rather, market reactions tend to be generated  
2 simply by contamination with a toxic substance, irrespective  
3 of the degree of toxicity."

4 Do you see where I read that?

5 A. Yes.

6 Q. When you used the term "not monotonically tuned,"  
7 what does that mean?

8 A. The simplest way to think of that is like a  
9 dimmer switch on a light. You turn it one way, the light  
10 goes up; you turn it back the other way, the light goes  
11 down. And the degree of illumination is a function of how  
12 far you turn the switch, one way or the other. A volume  
13 knob on a radio monotonically controls the decibel level.

14 Intuitive toxicology, as it's been  
15 studied not by toxicologists but by people in the social  
16 sciences, finds that perceptions of risk and thus  
17 perceptions of unreasonable risk of harm are more like  
18 off/on switches: Either something is there or it's not  
19 there.

20 You hear that something is present, and  
21 you turn your back and walk away from it.

22 Q. And just so I'm clear as to what you're saying,  
23 you're saying that it's the perception that can affect the  
24 value, not necessarily the health risk?

25 A. Yes. That's a good generalization.

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